

DAVID J. BARTOLI

IBLA 94-78 Decided February 3, 1999

Appeal from a decision of the Alaska State Office, Bureau of Land Management, declaring 47 lode mining claims abandoned and void for failure to file an affidavit of assessment work or a notice of intention to hold with the local recording office as required by section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1994). AA-24982 through AA-24998, AA-25449 through AA-25478.

Set aside and remanded.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim—Mining Claims: Abandonment—Mining Claims: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

Failure to file in the proper Bureau of Land Management office either evidence of assessment work performed or notice of intention to hold as required by 43 U.S.C. § 1744 (1994), and 43 C.F.R. § 3833.2 within the time period prescribed results in a conclusive presumption of abandonment of the mining claim.

2. Evidence: Presumptions—Evidence: Sufficiency—Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim—Rules of Practice: Evidence

The legal presumption that administrative officials have properly discharged their duties and considered only documents probative under applicable law, is rebuttable by evidence of record to the contrary. The presumption is rebutted where evidence of record fails to establish that the documents BLM considered in determining that Appellant's predecessor in interest had not filed an affidavit of assessment work performed or notice of intention to hold mining claims in 1980 and 1981 were prepared and submitted to BLM by an individual qualified under 43 C.F.R. § 3862.1-3.

APPEARANCES: David J. Bartoli, Pasadena, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE TERRY

David J. Bartoli has appealed an October 14, 1993, decision of the Alaska State Office, Bureau of Land Management (BLM), declaring the Kennecott Glacier No. 1 through No. 5 (AA-24982 through AA-24986), the Hidden Creek No. 1 through No. 12 (AA-24987 through AA-24998) and the Donahoe Peak No. 1 through No. 30 (AA-25449 through AA-25478) lode mining claims abandoned and void for failure to file an affidavit of assessment work or a notice of intention to hold the claims with the local recording office during the years 1980 and 1981 as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1994). ^{1/} At Appellant's request, the decision was stayed by order dated December 16, 1993.

[1] As noted in BLM's decision, FLPMA requires the owner of an unpatented mining claim located prior to October 21, 1976, to file:

within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter, * * * for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim * * * [or] an affidavit of assessment work performed thereon * * *.

43 U.S.C. § 1744(a)(1) (1994). Failure to file results in a conclusive presumption of abandonment of the mining claim. 43 U.S.C. § 1744(c); 43 C.F.R. § 3833.2. An Alaska statute further requires that "[t]he locator of a lode claim or placer claim shall within 90 days after the date of posting the notice of location on the claim have the claim recorded by recording a certificate of location with the recorder of the recording district in which the claim is located." Alaska Stat. § 27.10.050 (1983 & Supp. 1995); see Alaska Stat. § 27.10.060 (1983 & Supp. 1995).

It appears that, after this Board issued its decision in David J. Bartoli, 123 IBLA 27, 99 I.D. 55 (1992), concerning the Appellant's interest in these claims, the National Park Service (NPS) hired Land Field Services, Inc., of Anchorage and Fairbanks, Alaska to review local records for the claims. Under cover letter dated July 30, 1992, P.J. Sullivan, a Land Field Services, Inc., employee, provided NPS a report, an affidavit, copies of documents pertaining to the claims, and copies of the Chitina Recording District reception reports for December 30, 1980, and December 30, 1981. The affidavit states that Sullivan was "a Certified Abstractor of Title

^{1/} The claims were previously before the Board in David J. Bartoli, 123 IBLA 27, 99 I.D. 55 (1992).

under the provisions of 43 CFR 3862.1-3" who had "examined the records of the McCarthy Recording District and the Chitina Recording District" on July 24, 1992, and that:

My research indicates that no Affidavits of Annual Labor nor Notices of Intention to Hold for the assessment years 1980 and 1981 were filed in the Chitina Recording District for the Donahoe Peak No. 1 through No. 30 claims, the Hidden Creek No. 1 through No. 12 claims, or the Kennecott Glacier No. 1 through No. 5 claims.

By letter dated August 18, 1992, NPS geologist Danny Rosenkrans informed Bartoli that "[r]esearch of the records" for the claims in the "Glennallen/Chitina District Recording Office failed to locate any record of annual recordings/filings for 1980 and 1981." The NPS directed Bartoli to "respond within 30 days from receipt * * * with documentation that establishes timely annual recording/filing in 1980 and 1981 * * * in the State of Alaska Glennallen/Chitina District Recording Office."

Bartoli responded by letter dated September 14, 1992, in which he questioned Rosenkrans's authority and qualifications as a geologist to conduct a title examination of the claims. In particular, Bartoli contended that Rosenkrans lacked authority to "reopen and supersede" a 1986 adjudication of the claims by BLM shown on copies of case file abstracts which were enclosed with the response.

By letter dated October 28, 1992, Rosenkrans explained to Bartoli that his previous letter had "identified an apparent defect in recording/filing with the State of Alaska Glennallen/Chitina Recording Office, not with the Bureau of Land Management." He also stated that "the National Park Service again requires you [to] respond within 30 days from receipt of this letter with documentation that establishes timely annual recording/filing in 1980 and 1981 for the subject claims with the State of Alaska Glennallen/Chitina District Recording Office."

Bartoli responded by letter dated December 14, 1992, stating that, after investigating the matter, he believed he had "obtained sufficient information to at least partially respond to your inquiries." Of some significance, he stated: "It appears that Mel Barry, then owner, may not have filed his annual recordings in the Alaska Glennallen/Chitina District Recording Office for the years 1980 and 1981 on the subject unpatented mining claims." Bartoli argued, however, that "[o]ver the last 11 years, B.L.M. has reviewed and validated these claims on at least 3 known occasions" and that NPS had also reviewed the claims on several occasions and that their validity had been upheld, including by the Board in David J. Bartoli, supra. In addition, Bartoli contended that reliance on local records was not within the legislative purposes of FLPMA or BLM's land management needs and that such action could constitute a taking under the Fifth Amendment and was precluded by the statute of limitations and laches. Finally, he requested that any determination be made at a hearing after notice and an opportunity to be heard.

The NPS forwarded the documents it had received from Sullivan and its subsequent correspondence with Bartoli to BLM, which issued the decision on appeal. It states:

Review of the records of the State of Alaska Recording Districts for McCarthy and Chitina indicates that no assessment affidavits or notices of intent to hold for the subject mining claims were filed for the years 1980 and 1981. By letters dated August 18, 1992, and October 28, 1992, the National Park Service requested [that] documentation be submitted to establish that timely annual filings for the subject claims were recorded with the State Recording Office in 1980 and 1981. The claimants failed to provide such evidence.

Therefore, because assessment affidavits or notices of intent to hold were not filed with the State Recording Office for the years 1980 and 1981, the mining claims listed on the attached appendix are deemed abandoned and declared void.

Bartoli filed a timely notice of appeal and petitioned for a stay of the decision.

Prior to reviewing Appellant's arguments on appeal, one procedural matter must be addressed. Appellant's Notice of Appeal and Petition for Stay states: "A statement of reasons will be filed with the Board of Land Appeals, and served on all interested parties, within thirty (30) days after the date of this service (43 CFR §4.411)." No statement of reasons or additional filing has been received. Failure to file a statement of reasons subjects an appeal to summary dismissal. 43 C.F.R. §§ 4.402(a), 4.412(c). Dismissal of an appeal, however, is not appropriate when an appellant has otherwise identified a reason for the appeal and has supported it with argument or evidence showing that the decision is in error. See American Colloid Co., 128 IBLA 257, 262 (1994). Appellant's Petition for Stay presents six reasons why he believes he will prevail on the merits of the appeal. It is apparent that they repeat arguments raised in Appellant's letters to NPS. Accordingly, the Petition and letters will be considered as presenting Appellant's arguments on appeal. See Robert A. Erkins, 121 IBLA 61, 63 (1991). Although those arguments may provide a sufficient basis for altering BLM's decision, several defects in the record preclude addressing them at this time and resolving the appeal.

[2] As noted above, BLM issued the decision here under appeal after P.J. Sullivan, an employee of Land Field Services, Inc., of Anchorage, Alaska, examined the records of the McCarthy and Chitina recording districts at the request of the NPS, and provided NPS a report and an affidavit dated July 30, 1992. 2/ It appears that neither NPS nor BLM

2/ The affidavit states: "I, P. J. Sullivan, am a Certified Abstractor of Title under the provisions of 43 CFR 3862.1-3 * * *." The regulation referred to requires that a patent application be "supported by either

informed Bartoli that Land Field Services, Inc., had conducted a review of the recording district records and that Sullivan had provided a report and affidavit setting out his findings. Both NPS' letters and BLM's decision used the anonymous phrase "review of the records."

The controlling issue on appeal is whether an affidavit of assessment work or a notice of intention to hold was filed in the proper recording district in 1980 and 1981. The notices of intention to hold the claims filed by Melvin N. Barry with BLM on August 19, 1980, and August 7, 1981, do not bear a datestamp or other indication that they were recorded with a recording district. There was, however, no requirement that they do so. See 43 C.F.R. § 3833.2-3 (1979). Consequently, the only evidence in the record before the Board which supports BLM's decision are Sullivan's report and affidavit. If the Board were to issue a decision affirming BLM based upon those documents, it appears that Bartoli would learn of their existence only upon reading the decision. He would have had no opportunity to address the evidence which was the basis of BLM's decision. Fundamental fairness precludes such action. Bartoli should have been given copies of the report and affidavit. 3/

In addition, the record presents two uncertainties as to whether Sullivan's report and affidavit should be accepted as a sufficient basis on which to affirm BLM's decision. First, the documents before the Board do not consistently identify the relevant recording district where notices of intention to hold would have been recorded. Location certificates for the claims state that they were located in the Glennallen Recording District, but they are stamped as recorded in the McCarthy Recording District in 1973. A letter from Melvin N. Barry to BLM dated April 17, 1979, however, states: "We purchased these claims (Kennebecot Glacier #1 through 5) in 1973. At that time we helped him post them July 24, 1973 and later on made him file them at Glennallen, September 28, 1979, as we felt that he was neglecting this action." Sullivan's affidavit

fn. 2 (continued)

a certificate of title or an abstract of title" prepared "by a person, association, or corporation authorized by State laws to execute such a certificate and acceptable to the Bureau of Land Management." Because Alaska statutes do not expressly identify a means for obtaining authorization to prepare abstracts of title or execute certificates of title, it appears that the statement was intended to claim that Sullivan had been approved by BLM to prepare abstracts of title.

3/ The affidavit appears deficient because it states only that the documents were not found in the Chitina Recording District and does not address the McCarthy Recording District. The report, however, notes on page 2 that: "By Supreme Court Order No. 12 (Revision of July 1, 1975), the McCarthy Recording District was merged with the Chitina Recording District; the surviving District, with the same geographical boundaries of both prior Districts, being the Chitina Recording District."

states that he "examined the records of the McCarthy Recording District and the Chitina Recording District" but concludes only that no documents were filed in the Chitina Recording District. The discrepancy appears to be explained by a note on page 2 of the report which states: "By Supreme Court Order No. 12 (Revision of July 1, 1975), the McCarthy Recording District was merged with the Chitina Recording District; the surviving District, with the same geographical boundaries of both prior Districts, being the Chitina Recording District." Rosenkrans's letters to Bartoli, however, refer to the Glennallen/Chitina Recording Office, while BLM's decision refers to the "Recording Districts for McCarthy and Chitina," suggesting they remain separate.

Second, Sullivan's affidavit asserts qualification as "a Certified Abstractor of Title under the provisions of 43 CFR 3862.1-3." That regulation requires that a patent application be "supported by either a certificate of title or an abstract of title" prepared "by a person, association, or corporation authorized by State laws to execute such a certificate and acceptable to the Bureau of Land Management." A review of Alaska statutes does not reveal that they make any provision for obtaining authorization to prepare an abstract of title or execute a certificate of title. Nor does it appear that Sullivan was an attorney licensed to practice law in the State of Alaska. Consequently, the reference to 43 C.F.R. § 3862.1-3 is obscure, suggesting only that Sullivan claimed to be "acceptable" to BLM.

Based upon the above stated considerations and concerns, we deem it appropriate to set aside the decision and remand the case file to BLM for further action in conformance herewith. BLM should reexamine the claims to determine whether they are invalid for the reasons stated in the decision on appeal after reviewing the history of the relevant Alaska recording districts, the maintenance of recordation documents in those recording districts, the qualifications under state law to conduct title examinations, and BLM's acceptance of those qualifications. Such evidence should be in sufficient detail to allow this Board to assure itself that the title examination was conducted at the proper place by a qualified person, and that the statements and conclusions based upon that examination are adequate and correct.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision is set aside and the record is remanded to BLM for actions consistent with this decision.

James P. Terry
Administrative Judge

I concur.

R.W. Mullen
Administrative Judge

